IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 25.08.2006

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THE HONOURABLE MR. JUSTICE P.JYOTHIMANI

W.P.No.23948/2006 & M.P.1/2006

P.Ramasamy .. Petitioner

Vs

1.The Government of Tamilnadu,
rep.by its Secretary,
Department of Home, Fort St.George,
Chennai-9.

2.The Director General of Police,
Kamarajar Salai, Mylapore, Chennai-4.

3.The Deputy Inspector General of Police,
Ramanathapuram Range, Ramanathapuram.

4.The Deputy Inspector General of Police,
Vellore, Vellore. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for a writ of mandamus directing the respondents 1 to 3 to issue posting order as Inspector of Police with all attended benefits in pursuant of the order of this Court in W.P.No.451/2003 dated 15.11.2005.

For Petitioner : Mr.S.Packiaraj

For Respondents: Mr.A.Edwin Prabhakar, GA

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ORDER

The writ petition is filed for a direction against the respondents 1 to 3 to issue posting order as Inspector of Police with all attendant benefits pursuant to the order of the Division Bench of this Court in W.P.No.451/2003 dated 15.11.2005.

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2.The petitioner while working as Inspector of Police from 14.12.1987 at Sivakasi Police Station, certain charges were framed against him under Rule 3(b) of the Tamil Nadu Subordinate Services (Discipline & Appeal)Rules, 1955. After conducting the departmental enquiry, a punishment of reduction of rank as Sub-Inspector of Police for a period of two years was imposed. The petitioner has moved the Tamil Nadu Administrative Tribunal against the said order of the Deputy Inspector General of Police, Vellore/4th respondent, by filing O.A.No.919/2000, which was dismissed for default and a review petition filed to restore the Original Application was also dismissed. It was against the said order, the petitioner has moved this Court by filing W.P.No.451/2003 and the Division Bench of this Court, by order dated 15.11.2005 has allowed the writ petition by quashing the orders of the respondents 3 and 4, viz., the Deputy Inspector General of Police, Ramanathapuram, the Deputy Inspector General of Police, Vellore and also the Superintendent of Police, Virudhunagar, apart from setting aside the order of the Tamil Nadu Administrative Tribunal.

3.That order was passed based on the consideration that even in a criminal case, the Sessions Court has acquitted the petitioner. This order passed in W.P.No.451/2003 dated 15.11.2003 has become final. It is in these circumstances, as a consequence of the said order of the Division Bench of this Court, the present writ petition is filed by the petitioner for a direction against the respondents to give the petitioner the posting as Inspector of Police.

4.When this matter came up for admission, this Court has directed Mr.A.Edwin Prabhakar, learned Government Advocate to take notice on behalf of the respondents. Today, the learned Government Advocate submitted that while it is true that the Division Bench in W.P.No.451/2003 has allowed the writ petition on 15.11.2005 and also charges were framed against the petitioner including the punishment imposed against the petitioner as stated above. He would further submit that in another proceedings in PR.135/2002, the authorities have passed an order after enquiry against the petitioner, compulsorily retiring him from service on 30.9.2003.

5.According to the learned Government Advocate, as against the said order of compulsory retirement, the petitioner has moved the Tamil Nadu Administrative Tribunal and the Tribunal while setting aside the order of compulsory retirement, has modified the punishment as that of cutting of increment for a period of three years with cumulative effect. It is the case of the learned Government Advocate that as against the order of the Tribunal, the respondents have in fact, moved this Court by filing a writ

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petition in W.P.No.29430/2004 and the same has been admitted by this Court. However, the learned Government Advocate would fairly submit that even though the petitioner has filed a stay petition in W.P.M.P.No.35746/2004, no stay has been granted. The learned Government Advocate would submit that in as much as in respect of another occurrence, the petitioner is suffering a punishment. It will not be fair to permit the petitioner to be reinstated into the services.

6.I have considered the rival submissions made.

7.When admittedly, the Division Bench of this Court on 15.11.2005 has quashed passed against the petitioner by the respondents in W.P.No.451/2003 the natural consequence is only to reinstate the petitioner in the place where he was situated at the time when disciplinary proceeding was initiated. The mere fact that a subsequent charges have been framed against which certain proceedings are pending and writ petition is filed before this Court itself will not be an excuse to say that the previous order need not be implemented, unless there is an order of stay granted by this Court. Admittedly, there is no stay in respect of the subsequent disciplinary proceedings.

8.There is one more circumstances in this case as rightly pointed out by the learned Government Advocate that this writ petition is in respect of the Division Bench order which relates to the punishment imposed on the petitioner by the reduction of rank to the petitioner to lower rank of Sub-Inspector of Police and therefore, the question of proceeding of the petitioner based on the judgment given by the Division Bench in W.P.No.451/2003 may not arise. It is relevant to point out that even assuming that the Division Bench Judgment is only relating to the reduction in rank of the petitioner, there is absolutely no reason for the petitioner not to be given any posting when admittedly the order of compulsory retirement has been quashed by the order of the Tribunal in the other disciplinary proceedings.

9.I do not think that the respondents can have any defence to say that they will not implement the effect of the of the orders of the Division Bench dated 15.11.2005 passed in W.P.No.451/2003. It is always open to the respondents to obtain necessary orders in the writ petition which is pending in respect of charge memo. In the mean time, it is the duty on the part of the respondents to implement the same and consequentially reinstate the petitioner.

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10.In view of the same, the writ petition is allowed. No costs. Consequently, connected M.P.is closed.

ap 25.8.2006

This Writ Petition having been posted for being mentioned on Monday the twenty fifth day of september 2006 in pursuant to the order dated 25.8.2006 and made in WP.No.23948 of 2006 and in the presence of Mr. S. Packiaraj, Advocate for the petitioner and of Mr. A. Edwin Prabhakar Government Advocate for the respondents, the Court made the following order:-

This matter has come up by way of being mentioned today.

The writ petition by order dated 25.8.2006 has been allowed. However, there is no time limit given for implementing the order. In view of the same, the second and third respondents are directed to implement the order within a period of three weeks from the date of receipt of a copy of this order.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The Secretary, Government of Tamil Nadu,
Department of Home,
Fort St.George,
Chennai-9.

2.The Director General of Police,
Kamarajar Salai, Mylapore, Chennai-4.

3.The Deputy Inspector General of Police,
Ramanathapuram Range, Ramanathapuram.

4.The Deputy Inspector General of Police,
Vellore, Vellore.

+ one cc to Mr. S. Packiaraj, Advocate sr no. 45033

VC(CO)
SR/26.9.2006 W.P.No.23948/2006

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